

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,) CR-18-00258-EJD
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) JUNE 28, 2022
)
RAMESH "SUNNY" BALWANI,) VOLUME 42
)
DEFENDANT.) PAGES 7734 - 7740
)
_____)

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
KELLY VOLKAR
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

JUNE 28, 2022

2 P R O C E E D I N G S

3 (THE FOLLOWING PROCEEDINGS CONVENED OUTSIDE THE PRESENCE
4 OF THE JURY AT 2:20 P.M.)

5 THE COURT: THANK YOU. PLEASE BE SEATED. THANK YOU
6 AGAIN FOR YOUR COURTESY.

7 LET'S GO ON THE RECORD IN 18-258. UNITED STATES V. RAMESH
8 SUNNY BALWANI.

9 WHY DON'T I GET APPEARANCE OF THE PARTIES, JUST FOR THE
10 RECORD, PLEASE.

11 MR. SCHENK: GOOD AFTERNOON, YOUR HONOR.

12 JEFF SCHENK AND JOHN BOSTIC FOR THE UNITED STATES.

13 THE COURT: THANK YOU. GOOD AFTERNOON.

14 MR. COOPERSMITH: GOOD AFTERNOON, YOUR HONOR.

15 JEFF COOPERSMITH FOR MR. BALWANI, WHO IS PRESENT. I'M
16 JOINED BY MY COLLEAGUES AMY WALSH, STEVE CAZARES,
17 SACHI SCHURICHT AND AARON BRECHER.

18 THE COURT: THANK YOU. GOOD AFTERNOON. AND THANK
19 YOU FOR COMING BACK ON SUCH SHORT NOTICE.

20 I SHOULD SAY, WE DID -- WE HAVE RECEIVED A QUESTION FROM
21 OUR JURY. AND I HAVE THE QUESTION HERE, AND I WILL ASK OUR
22 COURTROOM DEPUTY TO DISTRIBUTE SOME COPIES TO THE PARTIES.

23 I WILL GIVE YOU A COUPLE OF MOMENTS TO READ IT AND THEN WE
24 WILL DISCUSS.

25 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

1 THE COURT: ALL RIGHT. THANK YOU.

2 WE HAVE PROVIDED COPIES TO COUNSEL. LET ME READ THE NOTE
3 AT THIS TIME. THIS IS DATED 6-28, THE TIME IS 1:35. IT'S NOTE
4 NUMBER 2.

5 THE NOTE READS: "I WOULD LIKE TO KNOW WHAT HAPPENS IF THE
6 JURY CANNOT AGREE IN A SPECIFIC COUNT, WHAT OTHER OPTION WE
7 HAVE BESIDES GUILTY AND NOT GUILTY?"

8 IT'S SIGNED BY A JUROR WITH TODAY'S DATE, AND I'VE READ
9 IT VERBATIM.

10 AND COUNSEL, I HAVE SOME THOUGHTS, BUT I'M HAPPY TO HEAR
11 FROM YOU FOR SOME PROPOSED ANSWERS.

12 LET ME -- AS YOU APPROACH THE LECTERN, MY ATTENTION IS
13 IMMEDIATELY DRAWN TO 6.19, WHICH IS INSTRUCTION NUMBER 29. AND
14 THE FIRST LINES 1 THROUGH 9 MIGHT BE HELPFUL, ALTHOUGH THE
15 ENTIRETY OF THE INSTRUCTION MIGHT BE HELPFUL AS WELL, BUT I'M
16 HOPING TO HEAR YOUR THOUGHTS.

17 MR. SCHENK: YOUR HONOR, THAT WAS THE GOVERNMENT'S
18 SUGGESTION WAS TO POINT THEM TO 6.19 AS THE APPROPRIATE USEFUL
19 GUIDANCE AT THIS STAGE.

20 MR. COOPERSMITH: I AGREE WITH THAT, YOUR HONOR.

21 I THINK THAT IS THE CORRECT INSTRUCTION, AND THAT'S THE
22 GUIDANCE THAT'S AVAILABLE TO THEM.

23 THE COURT: OKAY.

24 NOW, RATHER THAN BRING THEM OUT AND INFORM THEM, I'M HAPPY
25 TO SEND A NOTE BACK TO THEM WITH THAT RESPONSE. AND WOULD THAT

1 BE -- DO YOU AGREE WITH THAT?

2 MR. SCHENK: WE AGREE WITH THAT APPROACH.

3 MR. COOPERSMITH: YES, YOUR HONOR.

4 THE COURT: ALL RIGHT. THANK YOU.

5 SO LET'S WORDSMITH THE RESPONSE. SHOULD THE RESPONSE BE,
6 "THE COURT REFERS THE JURY TO INSTRUCTION NUMBER 29, DUTY TO
7 DELIBERATE," WITHOUT MORE, OR WHAT WOULD YOU LIKE ADDED, IF
8 ANYTHING, TO THAT?

9 MR. SCHENK: I DON'T THINK ANYTHING MORE NEEDS TO BE
10 ADDED. THAT WOULD BE FINE.

11 MR. COOPERSMITH: THE ONLY THING THAT COMES TO MIND,
12 YOUR HONOR, IS TO SAY THAT ALL THE INSTRUCTIONS ARE IMPORTANT,
13 THOSE ARE THE INSTRUCTIONS, BUT FOR THE PARTICULAR QUESTION,
14 THE COURT WILL REFER TO THE 29.

15 THE COURT: OKAY. LET'S DO THAT THEN.

16 (OFF-THE-RECORD DISCUSSION.)

17 THE COURT: WE ARE GOING TO SEE IF WE CAN GET A COPY
18 PRINTED RIGHT NOW IN REALTIME. I WILL GIVE IT TO YOU FOR YOUR
19 APPROVAL AND YOUR RECORDS, AND THEN IF APPROVED, WE WILL SEND
20 IT BACK TO THE JURY.

21 (PAUSE IN PROCEEDINGS.)

22 THE COURT: LET ME SHOW YOU WHAT WE HAVE PRINTED OUT
23 FOR YOUR APPROVAL, COUNSEL, AND OPEN TO ANY EDITS YOU WANT TO
24 SUGGEST.

25 MR. COOPERSMITH: YES, YOUR HONOR. THAT IS FINE.

1 I JUST WONDER IF THE COURT WANTED TO REMIND THE JURY THAT
2 ALL THE INSTRUCTIONS SHOULD BE READ AS A WHOLE AND ARE
3 IMPORTANT.

4 THE COURT: YOU KNOW, I KNOW THAT'S SOMETHING THAT
5 IS -- IT ACTUALLY APPEARS IN ONE OF OUR MODEL INSTRUCTIONS,
6 IT'S THE MODEL INSTRUCTION -- THAT LANGUAGE APPEARS IN THE
7 MODEL INSTRUCTION FOR A DEADLOCKED JURY, AND I THINK IT'S A
8 LITTLE PREMATURE TO GIVE THAT NOW.

9 MR. COOPERSMITH: YES, YOUR HONOR.

10 THE COURT: BUT I THINK THIS -- WELL, MR. SCHENK?

11 MR. SCHENK: YOUR HONOR, I THINK THIS IS APPROPRIATE,
12 IT CAPTURES THE APPROPRIATE INSTRUCTION, IN LIGHT OF THIS
13 JURY'S QUESTION. AT THIS STAGE, WE ARE IN THE FIRST DAY OF
14 DELIBERATIONS.

15 THE COURT: RIGHT. SO I DON'T THINK I WILL GIVE THAT
16 OTHER INSTRUCTION.

17 AS I SAID, I BELIEVE IT'S IN, WHAT IS IT, 6.25, I THINK IT
18 IS, OR 24, THE DEADLOCK JURY INSTRUCTION, BUT I THINK IT'S
19 PREMATURE TO GIVE IT NOW.

20 MR. COOPERSMITH: YES, YOUR HONOR. I UNDERSTAND.

21 THE COURT: OKAY.

22 ALL RIGHT. I WILL TAKE THIS BACK UP. I WILL SIGN IT AND
23 WE WILL HAVE THIS DELIVERED TO THE JURY.

24 AND MR. SCHENK?

25 MR. SCHENK: I JUST WANT TO CONFIRM ONE THING.

1 THE NOTE SIGNED IS NUMBER 2. THE NOTE NUMBER 1 WAS THE
2 SCHEDULE WE DISCUSSED FOR FRIDAY?

3 THE COURT: LET ME JUST TELL YOU, FOR THE RECORD,
4 NOTE NUMBER 1 WAS A POST-IT, IT HAD THEIR SCHEDULE ON IT.

5 I ASKED THE COURTROOM DEPUTY TO PUT THE POST-IT ON A
6 RESPONSE FORM, JUST LIKE THE ONE I JUST PREPARED, SO IT WILL
7 APPEAR IN THE RECORD ATTACHED AS NOTE NUMBER 1, IF THAT'S ALL
8 RIGHT WITH COUNSEL.

9 MR. COOPERSMITH: YES, YOUR HONOR.

10 MR. SCHENK: THANK YOU FOR DOING THAT.

11 MR. COOPERSMITH: YES.

12 THE COURT: OKAY.

13 ALL RIGHT. CAN WE MAKE A COPY OF THIS FOR COUNSEL WITH MY
14 SIGNATURE ON IT SO THEY HAVE IT BEFORE WE GIVE IT TO THE JURY?

15 THE CLERK: YES, YOUR HONOR.

16 THE COURT: OKAY. WE WILL GET A COPY FOR YOU.

17 ANYTHING FURTHER?

18 MR. SCHENK: NO, YOUR HONOR.

19 MR. COOPERSMITH: NO, YOUR HONOR.

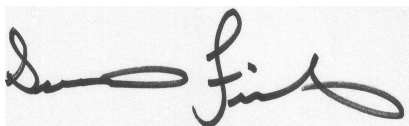
20 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

21 (COURT ADJOURNED AT 2:31 P.M.)
22
23
24
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 6/28/22